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ATTORNEYS FOR PLAINTIFFS
MIGUEL & BENJAMIN ORTEGA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIGUEL ORTEGA, BENJAMIN ORTEGA,
A Minor, By And Through His Guardian Ad
Litem, ANA ROSA ORTEGA,

Plaintiffs,

vs.

CITY OF OAKLAND, OAKLAND POLICE
DEPARTMENT, WAYNE TUCKER, In His
Capacity As The Police Chief Of The City Of
Oakland, RAMON J. ALCANTAR,
Individually And In His Capacity As A Police
Officer For The City Of Oakland, B. ORTIZ
Individually And In His Capacity As A Police
Officer For The City Of Oakland, Does 1
through 200,

Defendants.

) Case No.: C-07-02659 JCS

) **SECOND AMENDED COMPLAINT**
) **FOR DAMAGES FOR**
) **VIOLATION OF CIVIL RIGHTS**

) **DEMAND FOR JURY TRIAL**

Plaintiffs allege as follows:

INTRODUCTION

1. This is an action for money damages brought pursuant to 42 U.S.C. sections 1983 and 1988, and the First, Fourth and Fourteenth Amendments to the United States Constitution, and under the common law of the State of California, against the City of Oakland (hereinafter referred to as the "City"), the Oakland Police Department (hereinafter referred to as the Department), Police Chief Wayne Tucker (hereinafter referred to as "Tucker"), Police Officer

1 Ramon J. Alcantar (hereinafter referred to as “Alcantar”), Police Officer B. Ortiz (hereinafter
2 referred to as “Ortiz”) and fictitiously named Defendants (individually, and in their capacities as
3 police officers for the City). Jurisdiction is based upon 28 U.S.C. sections 1331 and 1343, and
4 on the pendent jurisdiction of this Court to entertain claims arising under state law.

5 2. On May 7, 2006, plaintiff Benjamin Ortega (hereinafter referred to as
6 “Benjamin”) was 15 years of age; his brother, plaintiff Miguel Ortega (hereinafter referred to as
7 “Miguel”) was 21 years of age. On that date both were returning to their cousin’s home on 62nd
8 Avenue in Oakland from having watched a *cinco de mayo* parade organized and sanctioned by
9 the City. Benjamin was carrying a Mexican flag, and was crossing International Blvd. toward
10 where Miguel waited on the corner with several relatives. He was lawfully crossing the street on
11 a green light.

12 3. Officer Alcantar and his partner, Officer Ortiz, were driving a marked City police
13 car. They stopped at the red light while Benjamin crossed in front of them. While Benjamin
14 was crossing on the green light, Benjamin was accosted by Alcantar, who told him to “hurry up,
15 or I’ll put that flag up your ass.” Miguel told Alcantar and Ortiz to leave Benjamin alone.
16 Plaintiffs then proceeded to the private property of relatives at 1387 - 62nd Ave., Oakland,
17 California. Alcantar and Ortiz followed plaintiffs to that location and, while standing outside of
18 the fence, Alcantar and Ortiz began to verbally taunt Benjamin who was standing in the yard.
19 Then, without probable cause to believe that Benjamin or anyone else on the property was or had
20 been involved in any crime, defendants Alcantar, Ortiz, and Does 1 to 100 entered onto the
21 private property where Benjamin was standing and physically attacked Benjamin. Defendant
22 Alcantar placed Benjamin in a “pain” hold, forced Benjamin to the ground, and demanded that
23 Benjamin submit to him. In so doing, Alcantar assaulted, battered and inflicted bodily injury on
24 Benjamin.

25 4. Ortiz and other police officers of the City, defendants Does 1 to 100, arrived and
26 detained Miguel, and in the process of being detained, Miguel was assaulted and battered, and
27 his civil rights were violated. At that point, defendants Alcantar, Ortiz and Does 1 to 100
28 arrested Benjamin and Miguel, handcuffed them both, and detained both of them in a City police

1 car. Plaintiffs were detained for approximately 30 minutes in the police car. Plaintiffs were then
2 released only after Alcantar and Ortiz extorted from plaintiffs a promise to give up their civil
3 right to redress in court for what the officers had done to plaintiffs.

4 5. At all times herein mentioned, Tucker, Alcantar, Ortiz, and Does 1 to 100 were
5 acting within the course and scope of their employment with the City, and were acting under
6 color of law.

7 6. Neither plaintiff had physically resisted or assaulted Alcantar, Ortiz, Does 1 to
8 100 or any other police officer, nor had committed any crime, and the force used against them
9 was unnecessary, unreasonable and excessive. Further, the actions of defendants Tucker,
10 Alcantar, Ortiz, and Does 1 to 100 violated plaintiffs' rights under the First, Fourth and
11 Fourteenth Amendments to the United States Constitution. Further these violations and torts
12 were committed as a result of policies and customs of the City and the Department that were
13 allowed, accepted and promoted by Tucker.

14 **JURISDICTION**

15 7. This action arises under Title 42 of the United States Code, Sections 1983 and
16 1988. Jurisdiction is conferred upon this Court by Title 28 of the United States Code, Section
17 1331 and 1343. The unlawful acts and practices alleged occurred in the City of Oakland,
18 California, which is within this judicial district.

19 8. Pursuant to 42 U.S.C. 1367(a) this court has supplemental jurisdiction over the
20 state claims brought in this action. The federal and state law claims arise from a common set of
21 operative facts and from the same set of transactions and occurrences.

22 **PARTIES**

23 9. Plaintiffs Benjamin and Miguel Ortega are and at all times herein mentioned were
24 residents of the City of Oakland, California.

25 10. Defendant City of Oakland is a political subdivision of the State of California,
26 duly organized and existing under the laws of the State of California, and defendant Oakland
27 Police Department is an duly organized agency of the City. (These two defendants may also
28 hereinafter be referred to jointly as the "City".)

1 of age. On that date both were returning to their cousin's home on 62nd Avenue in Oakland from
2 having watched a *cinco de mayo* parade organized and sanctioned by the City. Benjamin was
3 carrying a Mexican flag, and was crossing International Blvd. toward where Miguel waited on
4 the corner with several relatives. He was lawfully crossing the street on a green light.

5 16. Officer Alcantar and Officer Ortiz, were driving a marked City police car. They
6 stopped at the red light while Benjamin crossed in front of them. While Benjamin was crossing
7 on the green light, Benjamin was accosted by Alcantar, who told him to "hurry up, or I'll put that
8 flag up your ass." Miguel told Alcantar to leave Benjamin alone. Plaintiffs then proceeded to
9 the private property of relatives at 1387 - 62nd Ave., Oakland, California. Alcantar and Ortiz
10 followed plaintiffs to that location and, while standing outside of the fence, Alcantar and Ortiz
11 began to verbally taunt Benjamin who was standing in the yard. Then, without probable cause to
12 believe that Benjamin or anyone else on the property was or had been involved in any crime,
13 Alcantar entered onto the private property where Benjamin was standing and physically attacked
14 Benjamin. Alcantar placed Benjamin in a "pain" hold, forced Benjamin to the ground, and
15 demanded that Benjamin submit to him. In so doing, Alcantar assaulted, battered and inflicted
16 bodily injury on Benjamin.

17 17. Ortiz and other police officers of the City, Does 1 to 100, arrived and detained
18 Miguel, and in the process of being detained, Miguel was assaulted and battered, and his civil
19 rights were violated. At that point, Alcantar, Ortiz, and Does 1 to 100 arrested Benjamin and
20 Miguel, handcuffed them both, and detained both of them in a City police car. Plaintiffs were
21 detained for approximately 30 minutes in the police car. Plaintiffs were then released only after
22 Alcantar and Ortiz extorted from plaintiffs a promise to give up their civil right to redress in
23 court.

24 18. At all times herein mentioned, Tucker, Alcantar, Ortiz, and Does 1 to 100 were
25 acting within the course and scope of their employment with the City, and were acting under
26 color of law.

27 19. Neither plaintiff had physically resisted or assaulted Alcantar, Ortiz or any other
28 police officer, nor had committed any crime, and the force used against them was unnecessary,

1 unreasonable and excessive. Further, the actions of defendants Tucker, Alcantar, Ortiz, and
2 Does 1 to 100 violated plaintiffs' rights under the First, Fourth and Fourteenth Amendments to
3 the United States Constitution. Further these violations and torts were committed as a result of
4 policies and customs of the City and the Department that were allowed, accepted and promoted
5 by Tucker.

6 **FIRST CAUSE OF ACTION**

7 (42 U.S.C. §1983)

8 (Against Defendants City, Tucker, Alcantar, Ortiz, and Does 1 to 200)

9 20. Plaintiffs reallege and incorporate by reference paragraphs 1 through 19 of this
10 complaint.

11 21. In doing the acts complained of, defendants acted under color of law to deprive
12 plaintiffs of certain constitutionally protected rights, including, but not limited to:

13 a. The right to be free from the use of excessive force by police officers, which is
14 guaranteed by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution;

15 b. The right of freedom of expression, as protected by the First Amendment to the
16 United States Constitution;

17 c. The right to privacy, as protected by the United States Constitution;

18 d. The right to be free of unreasonable searches and seizures, as protected by the
19 Fourth Amendment to the United States Constitution.

20 22. As a proximate result of defendants' conduct, plaintiffs suffered injuries and
21 damages as hereinafter set forth.

22 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

23 **SECOND CAUSE OF ACTION**

24 (42 U.S.C. §1983 -- Monell)

25 (Against Defendants City, Tucker, Alcantar, Ortiz, and Does 1 to 200)

26 23. Plaintiffs reallege and incorporate by reference paragraphs 1 through 22 of this
27 complaint.

28 24. Defendants City, Tucker and Does 1 to 100, by and through their supervisory

1 officials and employees, Does 101 to 200, have been given notice on repeated occasions of a
2 pattern of ongoing constitutional violations and practices by defendants Alcantar, Ortiz, and
3 Does 1 to 100, and other City police officers, consisting of the use of unnecessary and excessive
4 force against citizens and false arrests of citizens. Specifically, arresting citizens without
5 probable cause such as is the case of the plaintiffs, harassing citizens with verbal threat such as is
6 the case of the plaintiffs, and threatening citizens, such as is the case with the plaintiffs and as set
7 forth above. Notwithstanding said notice, City, Tucker and Does 101 to 200 have demonstrated
8 deliberate indifference to this pattern and practice of constitutional violations by failing to take
9 necessary, appropriate, or adequate measures to prevent the continued perpetuation of said
10 pattern of conduct by Alcantar, Ortiz, Does 1 to 100 and other City police officers. This lack of
11 adequate supervisory response by City, Tucker and Does 101 to 200 demonstrates ratification
12 of the defendant police officers' unconstitutional acts, as well as the existence of an informal
13 custom or policy that tolerates and promotes the continued use of excessive force against and
14 violation of civil rights of citizens by City police officers.

15 25. The acts of defendants Alcantar, Ortiz, and Does 1 to 100, as alleged herein, are
16 the direct and proximate result of the deliberate indifference and policy and/or practice of
17 Defendants City, Tucker, and Does 101 to 200, to violations of the constitutional rights of
18 citizens by defendant police officers, and other members of the City Police Department.
19 Defendants City, Tucker, and Does 101 to 200 have taken no action to stop the false arrests,
20 verbal harassment, and threatening conduct, as is the case with the plaintiffs, and as set forth
21 above. Plaintiffs' injuries and damages were foreseeable and were the proximate result of the
22 deliberate indifference of the City, Tucker and Does 101 to 200 to the patterns, practices,
23 customs, and policies described above.

24 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

25 **THIRD CAUSE OF ACTION**

26 (42 U.S.C. § 1981)

27 (Against Defendants City, Tucker, Alcantar, Ortiz, and Does 1 to 100)

28 26. Plaintiffs reallege and incorporate by reference paragraphs 1 through 25 of this

1 complaint.

2 27. In committing the wrongful acts described herein defendants Alcantar, Ortiz, and
3 Does 1 to 100 engaged in the ethnically motivated misuse of government power.

4 28. The above-described acts of defendants Alcantar, Ortiz, and Does 1 to 100 further
5 deprived plaintiffs of their rights protected by 42 U.S.C. §1981, to the full and equal benefit of
6 all laws and proceedings for the security of persons and property as is enjoyed by Caucasian
7 citizens, and to be subject to like restrictions, punishment, pains, penalties, and exactions of
8 every kind, and to no other.

9 29. The conduct of defendants Alcantar, Ortiz, and Does 1 to 100 was committed
10 with the intent to deprive plaintiffs of the above-described rights.

11 30. The wrongful conduct of defendants Alcantar, Ortiz, and Does 1 to 100
12 proximately resulted in plaintiffs suffering injuries and damages as herein set forth.

13 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

14 **FOURTH CAUSE OF ACTION**

15 (California Civil Code §51.7)

16 (Against Defendants Alcantar, Ortiz, and Does 1 to 100)

17 31. Plaintiffs reallege and incorporate by reference paragraphs 1 through 30 of this
18 complaint.

19 32. Plaintiffs are informed and believe and thereon allege that the instant conduct was
20 based upon a past pattern and practice of similar conduct of defendants Alcantar, Ortiz, and Does
21 1 to 100 and that the conduct of Alcantar and Does 1 to 100, as described herein, was motivated
22 by ethnic prejudice against the plaintiffs. By engaging in such conduct, those defendants
23 violated plaintiffs' rights under California Civil Code §51.7 to be free from violence or
24 intimidation by threat of violence committed against them because of their race, color, or
25 ancestry.

26 33. Under the provisions of California Civil Code §52(b), those defendants are liable
27 for each and every offense for exemplary damages, for civil penalties of twenty-five thousand
28 dollars (\$25,000.00) in addition thereto, and for the payment of plaintiff's attorney's fees.

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3 **SEVENTH CAUSE OF ACTION**

4 (Intentional Infliction of Emotional Distress)

5 (Against Defendants Alcantar, Ortiz, and Does 1 to 100)

6 43. Plaintiffs reallege and incorporate by reference paragraphs 1 through 42 of this
7 complaint.

8 44. The conduct of defendants Alcantar, Ortiz, and Does 1 to 100, as set forth herein,
9 was extreme and outrageous, willful, and was done with the intent to inflict and did cause severe
10 mental and emotional distress upon plaintiffs.

11 45. As a result of said defendants' conduct, as aforesaid, plaintiffs are entitled to an
12 award of punitive damages.

13 WHEREFORE, Plaintiffs pray for relief as set forth herein.

14 **EIGHTH CAUSE OF ACTION**

15 (Negligence)

16 (Against Defendants Tucker, Alcantar, Ortiz, and Does 1 to 200)

17 46. Plaintiffs reallege and incorporate by reference paragraphs 1 through 45 of this
18 complaint, except for any and all allegations of intentional, malicious, extreme, outrageous,
19 wanton, and oppressive conduct by defendants Tucker, Alcantar, Ortiz, and Does 1 to 200, and
20 any and all allegations requesting punitive damages.

21 47. At all times herein mentioned, defendants Tucker, Alcantar, Ortiz, and Does 1 to
22 200 were subject to a duty of care, to avoid causing unnecessary physical harm and emotional
23 distress to citizens in the exercise of their police function. The conduct of those defendants as
24 set forth herein, did not comply with the standard of care to be exercised by reasonable police
25 officers nor did it comply with police department procedures, and proximately caused plaintiffs
26 to suffer damages as herein set forth, including physical harm and severe mental and emotional
27 distress.

28 WHEREFORE, Plaintiffs pray for relief as hereinafter set forth.

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3 **NINTH CAUSE OF ACTION**

4 (42 U.S.C. §1983 Negligent Selection, Training,
5 Retention, Supervision, Investigation, and Discipline)
6 (Against City, Tucker and Does 101 to 200)

7 48. Plaintiffs reallege and incorporate by reference paragraphs 1 through 47 of this
8 complaint.

9 49. Defendants City, Tucker, and Does 101 to 200 have, and at all times mentioned
10 herein had, a mandatory duty of care to properly and adequately select, train, retain, supervise,
11 investigate, and discipline defendants Alcantar and Does 1 to 100 herein so as to avoid
12 unreasonable risk of harm to citizens.

13 50. Said defendants, by and through their supervisory officials and employees, have
14 been given notice on repeated occasions of a pattern of ongoing constitutional violations and
15 unlawful practices by defendants Alcantar, Ortiz, and Does 1 to 100, and other City police
16 officers, including the use of unnecessary and excessive force against citizens.

17 51. Notwithstanding this notice, defendants City, Tucker and Does 101 to 200 have
18 demonstrated deliberate indifference to this pattern and practice of constitutional violations by
19 failing to take necessary, appropriate, or adequate measures to prevent the continued
20 perpetuation of this pattern of conduct by City police officers and defendants Alcantar, Ortiz,
21 and Does 1 to 100.

22 52. Said defendants breached their duty of care to citizens in that they have failed to
23 adequately train Defendants Alcantar, Ortiz, and Does 1 to 100, and other City police officers, in
24 the proper use of force in the course of their employment as peace officers. This lack of an
25 adequate supervisorial response by defendants City, Tucker, and Does 101 to 200, and lack of
26 adequate supervisorial training, demonstrates the existence of an informal custom or policy
27 which tolerates and promotes the continuing use of excessive force against citizens, and violation
28 of the civil rights of citizens by City police officers Alcantar, Ortiz, and Does 1 to 100.

WHEREFORE, Plaintiffs pray for relief as follows:

1. General damages according to proof at trial;
2. Special damages according to proof at trial;
3. Punitive damages against individual defendants Alcantar and Does 1 to 100 according to proof at trial;
4. Exemplary damages and a civil penalty of \$25,000.00 for each violation against plaintiffs of Civil Code §52.1(b), and reasonable attorney's fees, pursuant to Civil Code §52.1(h);
5. Reasonable attorney fees pursuant to 42 U.S.C. §1988;
6. Costs of suit incurred herein;
7. Such other and further relief as the Court may deem just and proper.

Dated: November 27, 2007

LAW OFFICES OF STEVEN R. JACOBSEN

By //ss// STEVEN R. JACOBSEN
Attorney for Plaintiffs